

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Queen of Peace Radio, Inc.)	File No. x18ed0003
)	
Licensee, WQOP(AM))	
Atlantic Beach, Florida)	
Facility ID # 48393)	
)	
For a Forfeiture)	

FORFEITURE ORDER

Adopted: January 28, 2000

Released: January 31, 2000

By the Chief, Enforcement Bureau:

1. In this Order, we impose a forfeiture of \$7,000 on Queen of Peace Radio, Inc., ("Queen of Peace"), licensee of Station WQOP, Atlantic Beach, Florida, for willful and repeated violations of the main studio rules, 47 C.F.R. Section 73.1125.

2. By Notice of Apparent Liability ("NAL"), DA 99-2342, released October 29, 1999, the Chief, Mass Media Bureau, determined that from August 21, 1997, to January 1, 1999, Queen of Peace failed to maintain a meaningful staff presence at the main studio for WQOP. In this regard, although the station's general manager reported to work at the main studio, spent a substantial amount of time there, and used the studio as his "home base," no other staff had regular hours at the station. Consequently, it appeared that there were no licensee personnel at the station's main studio during certain business hours. After considering the circumstances in light of the Forfeiture Policy Statement,¹ which provides a base forfeiture for a main studio rule violation of \$7,000, the Chief, Mass Media Bureau proposed a forfeiture of \$7,000. Queen of Peace has submitted a response, which requests cancellation of the forfeiture. We deny that request for the reasons that follow.

3. Queen of Peace first contends that it did not "willfully" violate the main studio rule. Queen of Peace declares that prior to its assuming control of WQOP, it had downloaded information from the Commission's web site in an effort to help it avoid violating the Commission's rules. Specifically, Queen of Peace obtained the June 1995 version of the "AM Broadcast Station Self-Inspection Checklist" ("95 Checklist"). According to Queen of Peace, the 95 Checklist did not mention staffing requirements at the main studio. As to staffing, Queen of Peace contends that it was not until the March 1999 version of the checklist that a broadcaster would be alerted to the need for having a management and staff presence at the main studio during an 8-hour period between 8 a.m. and 6 p.m. Queen of Peace argues that its prior ignorance of the Commission's requirements renders its failure to comply as inadvertent, not "willful."

¹ 12 FCC Rcd 17087 (1997), *recon. denied*, FCC 99-407, released December 28, 1999.

4. We disagree. At the outset, we note that the checklist on the Commission's web site was not meant to replace the Commission's rules or orders. In this regard, the checklist has no legal significance in that it does not appear in the Commission's rules as one of the printed publications or documents that could or should be relied upon or referenced.² Rather, the checklist is nothing more than an informal means of providing guidance. It was not meant to be an all-inclusive means of verifying compliance with the Commission's rules. Accordingly, the absence of information in the 95 Checklist regarding main studio staffing requirements is irrelevant to the issue of whether Queen of Peace's violations were willful.

5. In determining whether or not a violation of the Commission's rules was "willful," the issue is whether the person "knew he was doing the act in question, regardless of whether there was any intent to violate the law." Jerry Szoka, 14 FCC Rcd 9857, 9865 (1999); Southern California Broadcasting Co., 6 FCC Rcd 4387 (1991). Here, as noted above, Queen of Peace, over a 16-month period between August 1997 and January 1999, chose to employ only one person on a full-time basis, while relying on four volunteers to assist in the station's operation. Information provided by Queen of Peace reveals that the full-time employee was away from the station from noon to 1 p.m. each weekday and that he left the station by 3 p.m. each weekday. That information also shows that the four volunteers spent, collectively, as much as eight hours and as little as four hours at the main studio during a typical week, and Queen of Peace does not state when the volunteers were actually present. Thus, even if we assume that the volunteers' hours at the main studio never overlapped with each other's or with the hours of the station's full-time employee, we are constrained to conclude that Queen of Peace often left the WQOP main studio unattended during normal business hours. This staffing situation changed only after Queen of Peace hired a second full-time employee who, like the station's general manager, maintained his office at the main studio, and who was present at the main studio each weekday from 1 p.m. to 5 p.m. It thus appears that Queen of Peace chose to leave the main studio for WQOP unattended for significant periods between August 1997 and January 1999. Accordingly, we conclude that Queen of Peace's violation was willful within the meaning of the Communications Act and the Commission's rules. Moreover, as the foregoing analysis demonstrates, the violation was also repeated. *See Hale Broadcasting Corp.*, 79 FCC 2d 169, 171 (1980) ("repeatedly" means "simply more than once.")

6. Even if its acts are viewed as "willful," Queen of Peace argues that the Commission cannot impose a forfeiture because the main studio rules do not explicitly include a staffing component that specifies how many employees a licensee must have at a main studio and when they must be there. Queen of Peace further contends that the Commission cannot rely on its decision in Jones Eastern of the Outer Banks, Inc., 6 FCC Rcd 3615 (1991), *clarified*, 7 FCC Rcd 6800 (1992) ("Jones Eastern"), because that decision was never published in the Federal Register. Queen of Peace continues that, before the Commission can enforce a minimum staffing level at main studios, it must modify the main studio rules in the course of a notice and comment rule making proceeding.

7. Again, we disagree. In adopting new main studio rules, the Commission explicitly informed permittees and licensees that compliance with the main studio rules required maintenance of a meaningful staff and management presence.³ In this regard, the Commission stated:

² See Sections 0.411 – 0.423 of the Commission's Rules, 47 C.F.R. Sections 0.411 – 0.423.

³ Main Studio and Program Origination Rules, 3 FCC Rcd 5024 (1988); 53 FR 32899 (August 29, 1988).

A station must maintain a main studio which has the capability adequately to meet its function, as discussed above, of serving the needs and interests of the residents of the station's community of license. To fulfill this function, a station must equip the main studio with production and transmission facilities that meet applicable standards, maintain continuous program transmission capability, and maintain a meaningful management and staff presence. Maintenance of production and transmission capability will allow broadcasters to continue, at their option, and as the marketplace demands, to produce local programs at the studio. A meaningful management and staff presence will help expose stations to community activities, help them identify community needs and interests and thereby meet their community service requirements.

Main Studio and Program Origination Rules, 3 FCC Rcd at 5026 (footnotes omitted). Thus, contrary to Queen of Peace's argument, the rules, as clarified, do contain a staffing component, *i.e.*, maintenance of a meaningful management and staff presence.

8. Subsequently, in Jones Eastern, the Commission further clarified the concept of a meaningful management and staff presence, when it found unacceptable the staffing proposal advanced by the Jones Eastern licensee. In that case, the licensee argued that its main studio was adequately staffed with a full-time office manager, who was supervised at various unspecified times by the licensee's business manager and general manager for a total of six hours per week. The Commission rejected the proposal, concluding that the licensee's staffing arrangement would render the concept of a main studio "virtually meaningless." Accordingly, the Commission specified that, at a minimum, a main studio must maintain full-time managerial and full-time staff personnel. Id., 6 FCC Rcd at 3616. The Commission also stated that licensees need not have the same staff person and manager at the studio, as long as there was management and staff presence there during normal business hours. Id., at n. 2. With respect to management personnel, the Commission further clarified that they need not be "chained to their desks" but that they would be required to report to work at the main studio on a daily basis, spend a substantial amount of time there, and use the main studio as their "home base." Jones Eastern, 7 FCC Rcd at 6802. Applying these standards to Queen of Peace, we conclude that a main studio rule violation occurred at WQOP. Plainly, Queen of Peace's staffing situation, which left the WQOP main studio unattended at various times during normal business hours, was not the meaningful management and staff presence required by the Commission.

9. Finally, we reject the contention that we cannot rely on the Jones Eastern decisions because they have not been published in the Federal Register. Section 0.445(e) of the Commission's Rules⁴ provides that Commission decisions, which are published in the FCC Record and which contain substantive interpretations, "may be relied upon, used or cited as precedent by the Commission or private parties in any manner."

⁴ 47 C.F.R. Section 0.445(e).

10. Having considered all relevant information⁵ available, we conclude that the proposed forfeiture of \$7,000 should be paid. In this regard, we note that while Queen of Peace has a favorable history of overall compliance, the violation was continuous over a 16-month period. We therefore conclude that the base forfeiture amount should neither be adjusted upward nor downward as the adjustment criteria offset each other.

11. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. Section 503(b) and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, 47 C.F.R. Sections 0.111, 0.311 and 1.80(f)(4), that Queen of Peace Radio, Inc., licensee of Station WQOP, Atlantic Beach, Florida, FORFEIT to the United States the sum of \$7,000 (seven thousand dollars) for willful and repeated violations of Section 73.1125 of the Commission's Rules, 47 C.F.R. Section 73.1125.⁶

12. IT IS FURTHER ORDERED that a copy of this Forfeiture Order be sent by Certified Mail/Return Receipt Requested to counsel for the licensee, Dennis J. Kelly, Post Office Box 6648, Annapolis, Maryland 21401.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

⁵ In its response, Queen of Peace suggests that our enforcement activities are far more aggressive against religious broadcasters such as itself than they are against broadcasters who air "The Howard Stern Show," which Queen of Peace describes as obscene and indecent. Suffice it to say this argument lacks merit. The Commission has taken action repeatedly against licensees that have aired indecent programming and, when appropriate, we will continue to do so. *E.g.*, WQAM License Limited Partnership, FCC 99-187, released July 22, 1999 (Notice of Apparent Liability for \$35,000 forfeiture); Infinity Broadcasting Corporation, 9 FCC Rcd 6442 (1994) (Notice of Apparent Liability for \$200,000 forfeiture, subsequent history omitted).

⁶ Payment of the forfeiture may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the file number referenced above.